

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

SOUTHERN CALIFORNIA EDISON  
COMPANY,

*Plaintiff-Appellee,*

v.

LORETTA M. LYNCH; HENRY M.  
DUQUE; RICHARD A. BILAS; CARL  
W. WOOD; GEOFFREY F. BROWN,  
Commissioners of California  
Public Utilities Commission,  
*Defendants-Appellees.*

UTILITY REFORM NETWORK,  
*Defendant-intervenor-  
Appellant.*

No. 01-56879

D.C. No.  
CV-00-12056-RSWL

SOUTHERN CALIFORNIA EDISON  
COMPANY,

*Plaintiff-Appellee,*

RELIANT ENERGY SERVICES, INC.;  
MIRANT AMERICAS ENERGY  
MARKETING, LP,  
*Intervenors-Appellants,*

v.

LORETTA M. LYNCH; HENRY M.  
DUQUE; RICHARD A. BILAS; CARL  
W. WOOD; GEOFFREY F. BROWN,  
*Defendants.*

No. 01-56993

D.C. No.  
CV-00-12056-RSWL

SOUTHERN CALIFORNIA EDISON  
COMPANY,

*Plaintiff-Appellee,*

CALIFORNIA MANUFACTURERS AND  
TECHNOLOGY ASSN.,

*Intervenor-Appellant,*

v.

LORETTA M. LYNCH; HENRY M.  
DUQUE; RICHARD A. BILAS; CARL  
W. WOOD; GEOFFREY F. BROWN,  
in their official capacities as  
Commissioner of the California  
Public Utilities Commission,  
*Defendants-Appellees.*

No. 01-57020

D.C. No.

CV-00-12056-RSWL

ORDER

Appeal from the United States District Court  
for the Central District of California  
Ronald S.W. Lew, District Judge, Presiding

Argued and Submitted  
March 4, 2002—Pasadena, California

Filed September 23, 2002

Before: James R. Browning, Sidney R. Thomas and  
Johnnie B. Rawlinson, Circuit Judges.

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**ORDER**

We respectfully certify the following questions to the  
Supreme Court of California all as set forth in the attached  
request:

1. Does the stipulated judgment approved by the district court violate § 368 of Assembly Bill 1890 (Act of September 23, 1996, 1996 Cal. Legis. Serv. 854, *codified in* Cal. Pub. Util. Code §§ 330-398.5)?
2. Do the procedures employed in entering the stipulated judgment violate the Bagley-Keene Open Meeting Act, Cal. Gov't Code §§ 11120-11132.5?
3. Does the stipulated judgment violate § 454 of the Public Utilities Code by altering utility rates without a public hearing and the issuance of findings?

We stay all further proceedings in this case in this Court and the district court pending receipt of the answers to the certified questions. If the Supreme Court of California declines certification, we will resolve the issues according to our perception of California law.

The Clerk of the Court is hereby directed to transmit, under the official seal of the Ninth Circuit, a copy of this order, the attached Request for Certification, and a copy of the opinion filed concomitantly with this Order. The parties and amici are directed to file with the Supreme Court of California copies of all briefs and excerpts of record submitted to this Court. This case is withdrawn from submission until further order of the Court.

REQUEST FOR CERTIFICATION DIRECTED TO THE  
SUPREME COURT OF CALIFORNIA

Pursuant to Rule 29.5 of the California Rules of Court, a panel of the United States Court of Appeals for the Ninth Circuit, before which this appeal is pending, hereby certifies to the Supreme Court of California the previously identified

questions of law. The California courts provide no controlling precedent on these questions. The answers to the certified questions will be determinative of a part of this appeal. We respectfully request that the Supreme Court of California answer the certified questions presented below. Our phrasing of the issues should not restrict the Court's consideration of the issues.

I. *Caption of the Case*

The caption of the case is:

SOUTHERN CALIFORNIA EDISON  
COMPANY,

*Plaintiff-Appellee,*

v.

LORETTA M. LYNCH; HENRY M.  
DUQUE; RICHARD A. BILAS; CARL  
W. WOOD; GEOFFREY F. BROWN,  
Commissioners of California  
Public Utilities Commission,

*Defendants-Appellees.*

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*Defendants.*

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Commissioner of the California  
Public Utilities Commission,  
*Defendants-Appellees.*

No. 01-57020

D.C. No.  
CV-00-12056-RSWL

Counsel for the parties are as follows:

Robert E. Finkelstein and Randolph L. Wu, The Utility  
Reform Network, San Francisco, California; Michael J.

Strumwasser, Frederic D. Woocher, Johanna R. Shargel, Daniel J. Sharfstein, Strumwasser & Woocher LLP, Santa Monica, California; for the defendant-intervenor-appellant.

Gary M. Cohen, Arocles Aguilar, Harvey Y. Morris, and Carrie G. Pratt, Public Utilities Commission of the State of California, San Francisco, California, for the defendants-appellees.

Stephen Pickett, Barbara Reeves, and Kris G. Vyas, Southern California Edison Company, Rosemead, California; Ronald L. Olson, John W. Spiegel, and Henry Weissmann, Munger, Tolles & Olson LLP, Los Angeles, California; for the plaintiff-appellee.

Terry J. Houlihan and Geoffrey T. Holtz, McCutchen, Doyle, Brown & Enersen, LLP, San Francisco, California; John C. Morrissey and Brian I. Cheng, McCutchen, Doyle, Brown & Enersen, LLP, Los Angeles, California; for the intervenor-appellant Reliant Energy Services, Inc.

Bryan A. Merryman and Lisa A. Cottle, White & Case LLP, Los Angeles, California, for the intervenor-appellant Mirant Americas Energy Marketing, LP.

Keith R. McCrea and Jim Bushee, Sutherland Asbill & Brennan LLP, Washington, D.C., for the intervenor-appellant California Manufacturers and Technology Association.

## II. *Questions of Law to be Answered*

1. Does the stipulated judgment approved by the district court violate § 368 of Assembly Bill 1890 (Act of September 23, 1996, 1996 Cal. Legis. Serv. 854, *codified in* Cal. Pub. Util. Code §§ 330-398.5)?
2. Do the procedures employed in entering the stipulated judgment violate the Bagley-Keene Open

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Meeting Act, Cal. Gov't Code §§ 11120-11132.5?

3. Does the stipulated judgment violate § 454 of the Public Utilities Code by altering utility rates without a public hearing and the issuance of findings?

### III. *Statement of Facts*

A brief description of the factual background of this case is contained in the panel opinion that accompanies this Order.

### IV. *The Need for Certification*

All parties agree that the instant litigation is of the utmost importance to the California utility regulation and the California economy. We have resolved all of the pending federal questions. The only issues left for resolution are ones of state law. Federal courts are bound by the pronouncements of the state's highest court on applicable state law. *Davis v. Metro Productions, Inc.*, 885 F.2d 515, 524 (9th Cir. 1989). However, the decisions of California appellate courts provide no controlling precedent on these issues of state law; thus, this case satisfies the criteria for certification. *See* Cal. Rules of Court 29.5(a)(3). Resolution of the state law issues involved in this litigation will have a substantial effect on California law and the citizens of California, not only on the questions presented by this case, but in future state administrative proceedings. Therefore, principles of comity suggest that decisions about California state law be made by California courts.

### V. *Accompanying Materials*

The Clerk of the Court of the Ninth Circuit Court of Appeals has been directed to transmit, under the official seal of the Ninth Circuit a copy of the opinion filed concomitantly with this Order. The parties and amici have been directed to

file with the Supreme Court of California copies of all briefs and excerpts of record submitted to the Ninth Circuit Court of Appeals.

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Sidney R. Thomas  
United States Circuit Judge









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